

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

HARRY L. SAMUEL

Plaintiff,

v.

THOMAS CARROLL, ET. AL

Defendants,

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C.A. No. 05-037- SLR

JURY OF 12 DEMANDED

MOTION TO STRIKE

Pursuant to F.R.C.P.7(a), defendant First Correctional Medical moves the Court for an order striking Plaintiff's Respond [sic] to Defendant First Correctional Medical Answer to Plaintiff Complaint and Amended Complaint D.I. 74, D.I.77, for the following reasons:

1. F.R.C.P.7(a) allows a Complaint and an answer. A reply is permitted where there is a counter-claim. An answer by a co-defendant is permitted where there is a cross-claim. F.R.C.P.7(a) provides "no other pleadings shall be allowed, except that the Court may order a reply to an answer"

2. In this action, there has been a Complaint and an Amended Complaint filed by the plaintiff. Defendant First Correctional Medical has filed an Answer to both the Complaint and Amended Complaint.

3. The federal rules do not provide for a reply from the plaintiff in response to defendant First Correctional Medical's Answer, nor has this Court ordered plaintiff to file a reply to First Correctional Medical's Answer. For the aforementioned reasons, defendant First Correctional Medical requests that this Court strike Plaintiff's Respond [sic] to Defendant First Correctional Medical Answer to Plaintiff Complaint and Amended Complaint D.I. 74, D.I.77, from the record of

this case.

McCULLOUGH & McKENTY, P.A.

/s/ Dana Spring Monzo

Dana Spring Monzo

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P.O. Box 397

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(302) 655-6749

Attorney for Defendant First Correctional Medical

Date: July 28, 2006

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

HARRY L. SAMUEL

Plaintiff,

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THOMAS CARROLL, ET. AL

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ORDER

And now this _____ day of _____, 2006 having considered
Defendant, First Correctional Medical's Motion to Strike and any opposition thereto,

IT IS HEREBY ORDERED that Defendant, First Correctional Medical's Motion to
Strike is granted.

J.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

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CERTIFICATE OF SERVICE

I, **DANA SPRING MONZO**, hereby certify that on the 28th day of July, 2006, a copy of the attached *Motion to Strike* was served upon the following:

Via Electronic Service

Kevin J. Connors
1220 N. Market Street, Suite 500
P.O. Box 8888
Wilmington, DE 19899

Via Electronic Service

Ophelia M. Waters
820 N. French Street, 8th Floor
Wilmington, DE 19801

Via U.S. Mail

Harry L. Samuel
SBI# 201360
Delaware Correctional Center
1181 Paddock Road
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/s/ Dana Spring Monzo

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Attorney for Defendant First Correctional Medical

Dated: July 28, 2006